



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Audits & Surveys, Inc.

File: B-224556

Date: January 30, 1987

DIGEST

1. Protest that agency improperly considered that awardee had direct experience in conducting national surveys of household food consumption when evaluating proposals in procurement for nationwide food consumption survey is denied where solicitation listed as an evaluation criterion corporate experience in directly related activities. Agencies need not identify the various aspects of stated evaluation criteria which may be taken into account if, as here, such aspects are reasonably related to the stated criteria.
2. An agency is not required to discount a competitive advantage that might accrue to an offeror by virtue of incumbency so long as the advantage did not result from preferential treatment or other unfair government action.
3. Protest contending that agency manipulated protester during cost discussions to increase its price to its detriment is denied since record shows that the agency's discussions were fair and reasonable, consisting only of requests for support or explanations of proposed costs.
4. Protest that agency failed to hold meaningful discussions is without merit where agency sent protester questions that should have led the protester into areas of its proposal with which the agency was concerned, and protester was given opportunity to revise proposal with responses to these questions.
5. Protest that agency subtracted technical points for protester's use of an 8(a) firm and a small business firm as subcontractors is denied where agency awarded protester the maximum allowable points under the RFP criterion for use of small or small disadvantaged business concerns as subcontractors.

6. Protest that technical review panel never had access to protester's responses to questions raised about its proposal is denied where record shows otherwise.

DECISION

Audits & Surveys, Inc. (A&S), protests the award of a cost reimbursement contract to National Analysts (NA) under request for proposals (RFP) No. 86-60LP, issued by the United States Department of Agriculture's Food and Nutrition Service (USDA) for conduct of the Nationwide Food Consumption Survey (NFCS) 1987-1988.

We deny the protest.

Offerors were required to submit separate technical and cost proposals. The RFP contained the following six technical evaluation criteria worth a total of 900 points.

Adequacy of technical proposal	50
Understanding the purpose and objectives of the study	150
Technical adequacy of the plan of work	400
Efficient utilization of personnel resources	200
Corporate experience	75
Use of small or small disadvantaged business concerns as subcontractors	25

The RFP advised offerors that while award would be made to the offeror whose proposal represented the combination of technical merit and cost most advantageous to the government, paramount consideration would be given to the evaluation of technical proposals.

Proposals from A&S and NA, the only firms which submitted proposals, were reviewed by a six-member technical review panel (TRP) and found to be within the competitive range.

After submitting written responses to technical and cost questions, and participating in oral negotiations, A&S and NA submitted best and final offers of \$6,132,821 and \$6,154,150, respectively. NA received a final technical score 9 percent higher than A&S. In light of the RFP's direction that paramount consideration would be given to the evaluation of technical proposals, USDA determined that the NA proposal represented the best value to the government and awarded a contract to NA.

A&S first protests that the procurement was not open and competitive based on a statement USDA made at a debriefing that, while A&S had basic experience, the awardee "had a team ready to go that had worked in this area and had direct, immediate, relevant experience." A&S asserts that if the key reason for choosing NA was direct experience and not basic experience, the RFP should have explicitly required direct experience.

We first note that USDA has denied the protester access to of portions the technical and cost evaluation material but has provided the material for our review. A&S has been advised, however, of its technical ranking. We have reviewed the evaluation material in camera, but our discussion of its contents is limited because of the agency's restriction on its disclosure. Associations for the Education of the Deaf, Inc., B-220868, Mar. 5, 1986, 86-1 C.P.D. ¶ 220.

Solicitations must inform all offerors of the basis for proposal evaluation, and the evaluation must, in fact, be based on the factors set forth in the RFP. While agencies are required to identify the major evaluation factors, they are not required to identify the various aspects of each which might be taken into account, provided that such aspects are reasonably related to or encompassed by the stated criteria. Tidewater Health Evaluation Center, Inc., B-223635.3, Nov. 17, 1986, 86-2 C.P.D. ¶ 563. The solicitation listed as an evaluation criterion, "corporate experience in directly related activities with emphasis on experience in projects requiring extensive management." The record shows that USDA considered NA's proposal superior to A&S's because, among other reasons, NA had direct relevant experience in conducting national surveys of household food consumption, and A&S's direct experience was limited. We believe that experience in conducting national surveys of household food consumption, the very object of the procurement, was clearly encompassed by the corporate experience criterion and properly considered by USDA. See Technical Services Corporation, 64 Comp. Gen. 245 (1985), 85-1 C.P.D. ¶ 152.

To the extent that A&S is contending that NA had an unfair competitive advantage because it had previously completed nationwide surveys for USDA, we have previously held that a competitive advantage accruing to an offeror because of its position as the incumbent need not be discounted or equalized in favor of the other offerors so long as it does not result from preferential treatment or other unfair action by the government. See Engineering & Professional Services, Inc., B-224622, Nov. 17, 1986, 86-2 ¶ 570. The record here does not show that USDA acted unfairly to A&S or showed any

particular preference to NA. Rather, as stated above, USDA properly considered NA's survey experience under the RFP's category of corporate experience.

A&S also contends that improper auction techniques were employed by USDA. A&S alleges that its initial cost was substantially lower than the awardee's but it was given questions and suggestions which raised its costs, while the awardee was given questions and suggestions which lowered their costs--as demonstrated by the final cost difference, three-tenths of 1 percent.

USDA denies any unequal treatment of the offerors during discussions, and states that its objective was to negotiate issues which, if unresolved, could result in extensive cost overruns arising from underestimations by the offerors. According to USDA, some of the negotiated issues resulted from field pricing audits completed by the Defense Contract Audit Agency. Pricing modifications were attempts to either correct cost oversights or make the business proposal consistent with the technical proposal, states USDA.

We find no substance to A&S's allegation that USDA conducted improper price discussions. Rather, the questions asked by the agency about each offeror's cost proposal appear to have been fair and reasonable. As an example, one proposal task involved participation by project supervisors in a 5-day training session conducted by USDA. USDA's review of A&S's business proposal showed that regional field supervisors who were to train interviewers were listed as attending only 3 days of the session. In responding to USDA's question about the inconsistency, A&S increased time allocations for the task. In addition, under another task, no travel expenses were allocated for attendance by field staff at a dress rehearsal. When questioned by USDA, A&S budgeted more for the expenses. Similarly, USDA questioned NA about shortcomings in its proposal, including what appeared to be incomplete printing cost estimates, and NA responded by increasing its printing cost estimate.

Nothing in any of the agency's questions indicates any attempt by USDA to improperly instruct offerors to increase or decrease prices. Rather, the record shows that USDA merely asked each offeror to clarify aspects of its proposal which raised some concern on the agency's part about the adequacy or accuracy of the proposal. We find no impropriety in this, and note that in fact the agency was obligated to bring deficiencies to each offeror's attention. See Federal

Acquisition Regulation (FAR), 48 C.F.R. § 15.610(c) (1986); Indian Community Health Service, Inc., B-217481, May 15, 1985, 85-1 C.P.D. ¶ 547.

A&S also complains that few technical questions were raised about its proposal until after the technical reviewers gained access to its cost proposal, when it was presented with an "avalanche" of questions. A&S believes major technical issues should have been resolved prior to cost proposal review.

USDA reports that A&S's responses to the technical questions initially raised by USDA intensified the concerns that a majority of the technical review panel had concerning the initial proposal. Evaluation of the protester's business proposal revealed discrepancies between the business proposal and A&S's responses to questions on its technical proposal, and thus generated more questions. As we stated earlier, we do not think it unreasonable for USDA to ask offerors to clarify aspects of proposals which appear inadequate or inaccurate.

A&S also protests that USDA did not hold discussions on technical questions prior to the debriefing session. For example, A&S asserts that USDA should have held detailed discussions on A&S's processing of household food consumption survey data, which was cited as a weakness of A&S at the debriefing.

USDA responds that it discussed technical proposal deficiencies with A&S either in requests for written clarifications or during oral negotiations. For example, in written questions submitted to A&S on July 7, 1986, by USDA, A&S was asked to summarize how it planned to process data obtained in the household food consumption phase of the project. It was asked to make particular reference to interfaces with USDA in regard to missing food nomenclature, weights and assignment of prices for nonpurchased food items. USDA points out that it stated in the July 7, 1986, letter that A&S's proposal was unclear as to differences in handling foods reported as used by the household and foods reported as eaten by individual household members.

USDA states that at the debriefing it told A&S that its technical approach had allocated little or no time to resolving data-related problems when processing household food consumption survey data, and that this weakness had previously been brought to A&S's attention in a letter dated August 25, 1986, in which A&S was asked to respond to questions raised during the evaluation process.

Agencies generally must conduct written or oral discussions with all offerors in the competitive range, and this includes advising offerors of deficiencies in their proposals and providing them with the opportunity to submit revised proposals so that they have a chance to satisfy the government's needs. Tidewater Health Evaluation Center, Inc., B-223635.3, Nov. 17, 1986, 86-2 C.P.D. ¶ 563. Consistent with this rule, it is not necessary for an agency to furnish information in any particular form or manner, provided that it finds some means which reasonably communicates the nature and gravity of its concerns. Cosmodyne, Inc. et al., B-216258, et al., Sept. 19, 1985, 85-2 C.P.D. ¶ 304. We have recognized that meaningful discussions are held when the agency sends an offeror a letter requesting "clarifications" and containing questions which lead the offeror to the areas of its proposal deemed deficient, and the offeror has an opportunity to modify its proposal to correct the deficiencies. Arthur D. Little, Inc., B-213686, Aug. 3, 1984, 84-2 C.P.D. ¶ 149.

We believe USDA's questions indicated the deficiencies in A&S's proposal about processing household food consumption survey data and that A&S was afforded a reasonable opportunity to correct the deficiency. The Army presented A&S with written questions on July 7, July 22, and August 25, 1986. As USDA points out in its report, the July 7, 1986, questions clearly addressed deficiencies in A&S's processing of household food consumption data. Furthermore, the August 25, 1986, questions clearly state that a major limitation of A&S's proposal was its underestimation of efforts involved in collecting and processing data on food intakes by members of sample households, and in processing information obtained in the household food consumption phase. A&S was given the opportunity to respond to these questions about areas in its proposal deemed deficient and to submit a best and final offer. Therefore we deny this aspect of the protest.

A&S also protests that while the evaluation criteria called for the award of up to 25 technical points for use of an 8(a) firm, technical points were subtracted from its score for its use of an 8(a) firm and a small business firm. According to A&S, USDA told it at a debriefing that its use of subcontractors created an "awkwardness" in the movement of data.

USDA replies that it awarded A&S the full 25-point score for the use of two small business firms. According to USDA, A&S's references to comments in the debriefing about awkwardness in the movement of data were taken out of context. USDA states that it told A&S in the debriefing that one of the weaknesses in its proposal involved logistical complexities

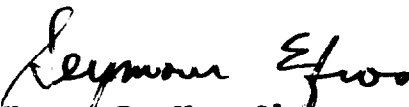
in its technical plan concerning the flow of survey materials among A&S and its subcontractors. USDA felt that the proposed flow pattern raised risks to the timely completion of the NFCS 1987-1988.

A&S comments that it is contradictory for USDA to award it 25 points for using the subcontractors at the same time it criticizes A&S for the flow of information among its subcontractors.

We do not see the contradiction, since two different evaluation criteria are involved. Our review of the record shows that USDA awarded A&S the maximum 25 points under the evaluation criterion for use of small or small disadvantaged business concerns as subcontractors. Under the evaluation criterion, "technical adequacy of the plan of work," USDA cited as a weakness A&S's proposed procedure for the flow of data among A&S and its subcontractors, which it considered cumbersome and time-consuming. We think it entirely consistent for USDA to recognize A&S's use of small business concerns at the same time it questions the technical adequacy of A&S's plan of work.

A&S comments that the technical review panel never had access to its September 4 response to questions raised about its proposal, and that its answers bore directly on areas where USDA felt its proposal was unclear. Our review of the record, however, shows that the panel chairperson prepared information requests and evaluations in consultation and concurrence from all panel members. The panel evaluated A&S's September 18 best and final offer, and their review resulted in no change to the technical scores.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel